

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION**

PELAGIC ENERGY,

Plaintiff,

vs.

LIBERTY MUTUAL INSURANCE,

Defendant.

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CIVIL ACTION NO. 1:17-cv-00137

DEFENDANT’S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1446(a) and Local Rule CV-81(a), Defendant Ohio Security Insurance Company (“Defendant”), incorrectly served and sued as “Liberty Mutual Insurance,”¹ files this Notice of Removal, hereby removing this action from the 42nd Judicial District Court of Taylor County, Texas to the United States District Court for the Northern District of Texas, Abilene Division. Removal is based on diversity jurisdiction because there is complete diversity between Plaintiff Pelagic Energy (“Plaintiff”) and Defendant, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. In support of its Notice of Removal, Defendant respectfully shows the Court as follows:

**I.
INTRODUCTION**

This dispute arises from Plaintiff’s claim for alleged storm damage to Plaintiff’s commercial property located at 3517 N. 6th, Abilene, Texas 79603 (the “Property”).

¹ “Liberty Mutual Insurance” is not a legal entity. However, even if Plaintiff intended to sue “Liberty Mutual Insurance Company,” diversity would still be proper, since Liberty Mutual Insurance Company is a corporation organized under the laws of the State of Massachusetts with its principal place of business in Boston, Massachusetts. Liberty Mutual Insurance Company is NOT the correct defendant, as it did not issue the applicable policy of insurance – Ohio Security Insurance Company did.

Plaintiff alleges that Defendant breached a policy of insurance and violated certain provisions of the Texas Insurance Code and Texas Deceptive Trade Practices Act (“DTPA”) by, among other things, failing to pay Plaintiff’s claim for damages allegedly resulting from a storm.

On August 11, 2017, Plaintiff filed its Original Petition in the 42nd Judicial District Court of Taylor County, Texas against Defendant. Defendant was served with a citation and a copy of Plaintiff’s Original Petition on or about August 21, 2017. Defendant timely filed an answer to Plaintiff’s Original Petition on September 12, 2017. This Notice of Removal is being filed within thirty (30) days of service of the Petition, and is thus timely filed under 28 U.S.C. §1446(b). As explained below, removal is proper because there is complete diversity of citizenship between the parties, and it is apparent from the face of Plaintiff’s Original Petition that the amount in controversy exceeds \$75,000.00.

II.

BASIS FOR REMOVAL

A. DIVERSITY OF CITIZENSHIP

Removal is proper because there is complete diversity between the parties. *See* 28 U.S.C. § 1332(a). Plaintiff is a domestic company engaging in business in Taylor County, Texas. *See* Plaintiff’s Original Petition at ¶ 2. Defendant is a corporation organized under the laws of the State of New Hampshire with its principal place of business in Boston, Massachusetts. Accordingly, Defendant is a New Hampshire and/or Massachusetts citizen for diversity purposes.

B. AMOUNT IN CONTROVERSY

Generally, the amount in controversy for purposes of establishing federal jurisdiction should be determined by the plaintiff’s complaint. *De Aguilar v. Boeing Co.*,

47 F.3d 1404, 1411-12 (5th Cir. 1995). Here, it is apparent from the face of Plaintiff's Original Petition that her claims exceed \$75,000.00. Plaintiff specifically pleads that it "seeks monetary relief of over \$100,000.00." Plaintiff's Original Petition at ¶ 1

Therefore, removal of this action is proper under 28 U.S.C. § 1441(a). This is a civil action brought in state court, and this Court has original jurisdiction over the subject matter pursuant to 28 U.S.C. § 1332(a). In addition, Plaintiff's citizenship is diverse from Defendant. Finally, as alleged in its Petition, Plaintiff seeks to recover in excess of \$100,000.00 from Defendant. Therefore, the amount in controversy in this case clearly exceeds \$75,000.00.

III. **CONSENT TO REMOVAL UNNECESSARY**

Defendant is the only defendant named in Plaintiff's Original Petition. Thus, no additional consent is needed for removal.

IV. **COMPLIANCE WITH PROCEDURAL REQUIREMENTS**

As required by Local Rule 8.1(a), filed concurrently with this Notice of Removal is a completed civil cover sheet, supplemental civil case cover sheet and a signed Certificate of Interested Persons that complies with LR 3.1(c). Additionally, the following exhibits are attached:

- **EXHIBIT A** Index of all documents filed in the state court action;
- **EXHIBIT B:** Register of Actions in the state court action; and;
- **EXHIBITS C-1 – C-2:** A copy of each document filed in the state court action.

Pursuant to Section 28 U.S.C. §1446(d), Defendant will give written notice of the filing of this Notice of Removal to all adverse parties promptly after the filing of same.

Pursuant to 28 U.S.C. §1446(d), Defendant will file a true and correct copy of this Notice of Removal with the District Clerk, Taylor County District Court, Texas, promptly after filing of same.

V.
REQUEST FOR RELIEF

Based on the foregoing, Defendant Ohio Security Insurance Company, incorrectly sued as “Liberty Mutual Insurance,” respectfully requests that the above-captioned action now pending in the 42nd Judicial District Court of Taylor County, Texas be removed to the United States District Court for the Northern District of Texas, Abilene Division. Defendant further requests all such other and further relief to which it is justly entitled.

Respectfully submitted,

/s/ Colin R. Batchelor

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**ATTORNEYS FOR DEFENDANT
OHIO SECURITY INSURANCE
COMPANY**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been forwarded to Plaintiff's counsel of record via electronic means and/or facsimile on September 15, 2017, in accordance with the FEDERAL RULES OF CIVIL PROCEDURE.

ATTORNEYS FOR PLAINTIFF

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